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TOR	24	

Court File No. T-316-22

FEDERAL COURT

BETWEEN:

CANADIAN CIVIL LIBERTIES ASSOCIATION

Applicant

– and –

ATTORNEY GENERAL OF CANADA

Respondent

Application for Judicial Review under Sections 18 and 18.1 of the
Federal Courts Act, R.S.C. 1985, c. F-7

**MOTION RECORD
OF THE ATTORNEY GENERAL OF ALBERTA
FOR LEAVE TO INTERVENE PURSUANT TO RULE 110**

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TAB 1

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April 08, 2022 08 avril 2022			
Michael Pace			
TOR		15	

Court File No.: T-347-22

FEDERAL COURT

BETWEEN:

CANADIAN CONSTITUTION FOUNDATION

Applicant

- and -

ATTORNEY GENERAL OF CANADA

Respondent

Application for Judicial Review under Sections 18 and 18.1 of the
Federal Courts Act, R.S.C. 1985, c. F-7

AND BETWEEN:

Court File No.: T-316-22

CANADIAN CIVIL LIBERTIES ASSOCIATION

Applicant

- and -

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Respondent

Application for Judicial Review under Sections 18 and 18.1 of the
Federal Courts Act, R.S.C. 1985, c. F-7

**NOTICE OF MOTION OF THE ATTORNEY GENERAL OF ALBERTA
FOR LEAVE TO INTERVENE PURSUANT TO RULE 110**

TAKE NOTICE THAT the Attorney General of Alberta (“**AG of Alberta**”) will make a motion in writing to the Federal Court under Rule 369 of the *Federal Courts Rules*, SOR/98-106.

THE MOTION IS FOR an order pursuant to Rule 110(c) of the *Federal Courts Rules*, adding the AG of Alberta as an intervener in these proceedings in respect of the matters raised in this Notice of Motion.

THE GROUNDS FOR THE MOTION ARE:

- 1) The matters upon which the AG of Alberta seeks to intervene are questions of general importance and significant public interest. The Court’s determination on these matters will have an impact nationally and on Alberta;
- 2) The invocation of the *Emergencies Act*, R.S.C. 1985, c. 22 (4th Supp.) by the Governor in Council is unprecedented. For nearly 35 years, it has existed as an extraordinary tool of last resort for exceptionally dire circumstances that might face our nation. Fortunately, it had remained unused—until eight weeks ago, when it was invoked by the Governor in Council under the guise of a “national emergency” to respond to localized protests;
- 3) The provisions in Part II of the *Emergencies Act* resorted to by the Governor in Council expressly require that, before the powers under it are exercised, specific statutory conditions must be met;
- 4) It is important that all such conditions are met, as otherwise the *Proclamation Declaring a Public Order Emergency*, SOR/2022-20 (“**Proclamation**”), *Emergency Measures Regulations*, P.C. 2022-107, SOR/2022-21 and *Emergency Economic Measures Order*, P.C. 2022-108, SOR/2022-22 (collectively, the “**Enactments**”) are outside the scope of legislative power and are *ultra vires*;
- 5) The underlying Applications for Judicial Review raise important questions about the proper interpretation of the *Emergencies Act*, and the scope of the powers granted to the Governor in Council. One important aspect of that interpretation is recognition of the deference to be given to the provinces that is specifically contemplated in in the text of the *Emergencies Act*;

- 6) The AG of Alberta has a direct interest in these issues, as Alberta is one of the provinces to which the Enactments applied; it is a province that experienced, and resolved, a blockade at which the Enactments were purportedly targeted; and the development of the law on these issues would affect the province if the *Emergencies Act* is invoked in the future;
- 7) The AG of Alberta's interests support its intervention to argue that the use of the powers under the *Emergencies Act* must be confined to situations in which all the criteria set out in the legislation are strictly met, as this serves as an important safeguard for the principle of federalism, which is part of the bedrock of Canada's constitutional framework;

Proposed Submissions of the AG of Alberta

- 8) If this motion is granted, the AG of Alberta intends to make submissions on five points regarding the interpretation of the statutory powers granted to the Governor in Council:
 - a) To meet the definition of "national emergency" in s. 3(a) of the *Emergencies Act*, it must be "of such proportions or nature as to exceed the capacity or authority of a province to deal with it". This must be interpreted narrowly, and requires considering available provincial legislation;
 - b) To meet the definition of "national emergency" in s. 3 of the *Emergencies Act* requires that it "cannot be effectively dealt with under any other law of Canada". This is an imperative direction that must be interpreted narrowly, and requires that the Governor in Council must be satisfied that it is impossible to use existing federal legislation, such as the *Criminal Code*, to deal with the purported "national emergency";
 - c) The requirement in s. 17(2)(c) of the *Emergencies Act* to specify in the area of Canada to which the effects of the emergency extend in the declaration of public order emergency, if those effects do not extend to the whole of Canada, is an imperative direction. It must be interpreted strictly, such that a declaration would be *ultra vires* to the extent that it is

- proclaimed for areas of Canada beyond those to which actual effects of the public order emergency extend;
- d) Subsection 25(1) of the *Emergencies Act* requires that, “before the Governor in Council issues, continues or amends a declaration of a public order emergency, the lieutenant governor in council of each province in which the effects of the emergency occur shall be consulted with respect to the proposed action”. To be meaningful, this provision must require substantial weight be given to those views prior to any invocation of the *Emergencies Act*;
 - e) Enactments issued under the power granted by s. 19(1) of the *Emergencies Act* are expressly limited by s. 19(3), which states in relevant part: “The power under subsection (1) to make orders and regulations... shall be exercised... with the view of achieving, to the extent possible, concerted action with each province with respect to which the power... is exercised or performed”. The limitations in s. 19(3) are not superfluous. They are essential to maintaining the principles of federalism, which underpin the functioning of our nation. The *vires* of an exercise of power under s. 19(1) must be interpreted with due consideration to the requirements of s. 19(3);

Alberta’s Significant Interest and Unique Perspective

- 9) The powers under the *Emergencies Act* are extraordinary. They permit incursion by the Government of Canada into matters that would, absent a true national emergency, be areas of provincial jurisdiction. If not properly invoked with careful attention to statutory requirements, exercising these powers compromises the rights of the province of Alberta that are enshrined in our constitution;
- 10) The AG of Alberta has a significant interest in ensuring that clear guidance is established for the use of the *Emergencies Act*. That issue has the potential to impact Alberta, and all of its citizens, in future situations in which the Government of Canada may wish to use the *Emergencies Act* as a tool;

- 11) The AG of Alberta's participation will assist the Court and provide an important provincial perspective. Unlike the parties, Alberta is one of the provinces to which the duty of consultation is owed, and is well placed to make arguments respecting the scope of that duty;
- 12) The Enactments regulate property and civil rights, local works and undertakings, and matters of a merely local nature, which are matters generally reserved to the provinces under s. 92 of the *Constitution Act, 1867*, 30 & 31 Victoria, c. 3 (U.K.). A provincial perspective on whether the Enactments were validly invoked, and therefore properly respect the balance of federalism that lies at the core of the strict conditions on the powers enshrined in the *Emergencies Act*, is therefore helpful;
- 13) The issues upon which the AG of Alberta seeks to make submissions are raised by the Notices of Application, which allege that the Enactments are unlawful because they do not meet key legislative requirements in the *Emergencies Act*;
- 14) The AG of Alberta's position will not be adequately asserted by any of the parties and the interests of justice are better served by the AG of Alberta's intervention;
- 15) The AG of Alberta will not unduly delay or complicate the proceedings and will adhere to any existing timelines set by the Court, and indeed will already be participating as an intervener as of right on constitutional issues in these Applications pursuant to s. 57 of the *Federal Courts Act*, RSC 1985, c F-7;

Procedural Requests

- 16) The AG of Alberta has already sent notice that it is intervening in Court File No. T-347-22 as of right pursuant to the Notice of Constitutional Question ("NCQ") served upon it on March 31, 2022. The AG of Alberta also intends to intervene in Court File No. T-316-22 as of right pursuant to the NCQ that will need to be served under the *Federal Courts Act*;

- 17) The AG of Alberta proposes filing one joint memorandum of fact and law in respect of both these matters, not to exceed 20 pages, which would address the issues raised in this Notice of Motion and the constitutional issues raised in the NCQs;
- 18) The AG of Alberta requests permission to make oral submissions at the hearing, not to exceed 20 minutes;
- 19) The AG of Alberta asks that no costs be awarded for or against him for this motion or for his participation as an intervener if the motion is granted.

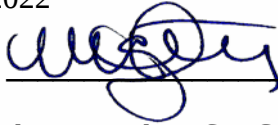
Statutory Provisions and Further Grounds Relied Upon

- 1) *Federal Courts Rules*, SOR/98-106, and particularly Rules 3, 53, 110, and 369;
- 2) *Emergencies Act*, RSC 1985, c 22 (4th Supp);
- 3) *Interpretation Act*, RSC 1985, c I-21, s. 11;
- 4) *Criminal Code*, RSC 1985, c C-46;
- 5) Such further and other grounds as this Honourable Court may deem just.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- 1) Affidavit of Robert Andrews sworn April 7, 2022;
- 2) Such further and other material as this Honourable Court may allow.

Signed this 8th day of April, 2022



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TAB 2

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F I L E D	FEDERAL COURT COUR FÉDÉRALE	D É P O S É	
April 08, 2022 08 avril 2022			
Michael Pace			
TOR		16	

Court File No.: T-347-22

FEDERAL COURT

BETWEEN:

CANADIAN CONSTITUTION FOUNDATION

Applicant

- and -

ATTORNEY GENERAL OF CANADA

Respondent

Application for Judicial Review under Sections 18 and 18.1 of the
Federal Courts Act, R.S.C. 1985, c. F-7

AND BETWEEN:

Court File No.: T-316-22

CANADIAN CIVIL LIBERTIES ASSOCIATION

Applicant

- and -

ATTORNEY GENERAL OF CANADA

Respondent

Application for Judicial Review under Sections 18 and 18.1 of the
Federal Courts Act, R.S.C. 1985, c. F-7

AFFIDAVIT OF DEPUTY CHIEF ROBERT ANDREWS

I, Deputy Chief Robert (Bob) Andrews, peace officer, of the City of Edmonton, in the Province of Alberta, SWEAR THAT:

Background

1. I have been an employee of the Government of Alberta for 15 years at the Alberta

Sheriffs Branch (“**Sheriffs**”). In my current role, I have managerial oversight of the Sheriff Highway Patrol (“**SHP**”) at the Department of Justice and Solicitor General. As such, I have personal knowledge of the matters set out in this affidavit, except where those matters are stated to be based on information and belief, in which case I verily believe them to be true.

2. From January 29 to February 15, 2022, a group of individuals (“**Protesters**”) created intermittent blockades on Highway 4, north of the Canada – United States border crossing (“**Border Crossing**”) in and around the village of Coutts, Alberta (“**Coutts Blockade**”). The Coutts Blockade impeded traffic and resulted in instances of closure of the Border Crossing. I am informed by SHP Sergeant Cale Malsbury, and verily believe, that on January 29, 2022, a convoy of approximately 2,000 vehicles arrived and set up the Coutts Blockade.

3. I am informed by Sergeant Malsbury, and verily believe, that on January 30 and February 1, 2022, the RCMP set up checkpoints and barricades at Highway 4 and Highway 501, near Milk River, approximately 15 kilometres north of Coutts, Alberta (“**Checkpoints**”). The purpose of the Checkpoints was to prevent additional Protestors from continuing southbound to join the Coutts Blockade. Residents of the area and commercial vehicles and travelers attempting to cross at the Border Crossing were permitted to continue toward Coutts, Alberta.

4. I am informed by Sergeant Malsbury, and verily believe, that on February 1, 2022, some Protestors used vehicles to set up a further blockade in front of the Checkpoints (“**Milk River Blockade**” and, collectively with the Coutts Blockades, “**Blockades**”).

5. During the Blockades, SHP provided a support role to the Royal Canadian Mounted Police (“**RCMP**”). The RCMP act as Alberta’s provincial police service through an agreement between the Government of Alberta, who pays for the service, and the Government of Canada. The SHP and the RCMP engaged in bilateral information sharing with respect to the Blockades, including through assignment of SHP personnel to the RCMP’s Divisional Emergency Operations Centre (“**DEOC**”). Where I state in this affidavit that I am informed of information about the RCMP by my SHP colleagues, I believe that their information came through this bilateral information sharing process, and that information was shared with me as their manager.

Law-enforcement action regarding the Blockades

6. I am informed by SHP Inspector John Zee and verily believe, that between February 11

and 14, 2022, SHP issued approximately 142 tickets under the *Traffic Safety Act*, RSA 2000, c T-6, at and around the Blockades. These tickets were for offences under that *Act* including tickets for unregistered vehicles, parking on the highway, covered license plates, unnecessary use of the horn, distracted driving, speeding, equipment issues, and disobeying a peace officer.

7. I am informed by Inspector Zee, who was assigned to the DEOC, and verily believe, that early on the morning of February 14, 2022, the RCMP executed a search warrant, seized weapons (13 long-barrelled firearms, two handguns, several machetes, and ammunition), and thereby arrested 11 Protestors and laid charges against them pursuant to the *Criminal Code*, RSC 1985, c C-46 (the “Arrests”).

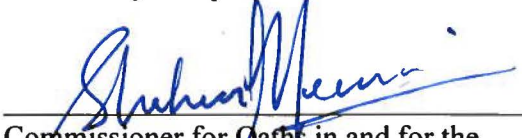
8. I am informed by Inspector Zee, and verily believe, that thereafter on February 14 and 15, 2022, substantially all of the Protesters left the area around Coutts and Milk River, bringing an end to the Blockades and resumption of normal operation of the Border Crossing.

9. I am informed by Inspector Zee, and verily believe, that after the Arrests, some Protestors moved to a legal protest site, away from any highways. My information is that, as of February 17, 2022, the site was occupied by 15 recreational vehicles, 35 passenger vehicles, and approximately 65 Protestors. Protestors at this site did not cause any interference with traffic on highways or at the Border Crossing.

10. All actions by the SHP and the RCMP that I am aware of regarding the Blockades were pursuant to existing law-enforcement powers.

11. I make this affidavit to support a motion to intervene in these proceedings by the Attorney General of Alberta.

SWORN BEFORE ME at Edmonton, Alberta,)
this 7th day of April, 2022.)



Commissioner for Oaths in and for the)
Province of Alberta)



Deputy Chief Robert Andrews

SHAHEER MEENAI
Barrister & Solicitor

TAB 3

FEDERAL COURT

BETWEEN:

Court File No.: T-347-22

CANADIAN CONSTITUTION FOUNDATION

Applicant

- and -

ATTORNEY GENERAL OF CANADA

Respondent

Application for Judicial Review under Sections 18 and 18.1 of the
Federal Courts Act, R.S.C. 1985, c. F-7

AND BETWEEN:

Court File No.: T-316-22

CANADIAN CIVIL LIBERTIES ASSOCIATION

Applicant

- and -

ATTORNEY GENERAL OF CANADA

Respondent

Application for Judicial Review under Sections 18 and 18.1 of the
Federal Courts Act, R.S.C. 1985, c. F-7

**WRITTEN REPRESENTATIONS OF THE MOVING PARTY,
ATTORNEY GENERAL OF ALBERTA**

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PART I: OVERVIEW

1. The Moving Party, the Attorney General of Alberta (“**AG of Alberta**”), seeks leave to intervene and make submissions about non-constitutional issues raised by these applications for judicial review pursuant to Rule 110(c) of the *Federal Courts Rules*¹.

2. These applications raise important questions about the interpretation of several provisions of the *Emergencies Act*,² which will require consideration of the balance between federal and provincial powers under this legislation. The AG of Alberta has a direct interest in these issues and an important provincial perspective to bring to its submissions on the appropriate interpretation and application of these provisions.

PART II: BACKGROUND

3. The interest of the AG of Alberta in intervening arises not only from the important legal questions the applications raise, but from the province being directly affected by the decision under review.

4. From January 29 to February 15, 2022, there were protests in and around the village of Coutts, Alberta, that created intermittent blockades, north of the Canada-United States border crossing (“**Coutts Blockade**”).³ Action was taken by the Royal Canadian Mounted Police (“**RCMP**”), acting as Alberta’s provincial police force, to disperse the Coutts Blockade.⁴ The RCMP executed a search warrant on February 14 that was a significant turning point, and by the next day, the Coutts Blockade had ended and operations at the border crossing were back to normal.⁵

¹ *Federal Courts Rules*, [SOR/98-106](#) (“**Rules**”)

² *Emergencies Act*, [RSC, 1985, c 22 \(4th Supp.\)](#) (“**Emergencies Act**”)

³ Affidavit of Deputy Chief Robert Andrews sworn April 7, 2022 at para. 2 (“**Andrews Affidavit**”) [Motion Record, [Tab 2](#)]

⁴ Andrews Affidavit at paras. 5, 7-9 [Motion Record, [Tab 2](#)]

⁵ Andrews Affidavit at paras. 7-9 [Motion Record, [Tab 2](#)]

5. On February 15, 2022, the *Proclamation Declaring a Public Order Emergency*⁶ (“**Proclamation**”), *Emergency Measures Regulations*,⁷ and *Emergency Economic Measures Order*⁸ (collectively, the “**Enactments**”) were introduced.
6. The Proclamation declared a public order emergency existing “throughout Canada” on the basis of s. 17(1) of the *Emergencies Act*,⁹ which necessarily amounts to a declaration that the effects of a public order emergency extended to Alberta. In its description of the nature of the purported emergency, the Proclamation cites “the continuing blockades by both persons and motor vehicles that is occurring at various locations throughout Canada”. This included the Coutts Blockade, which was resolved by the date of the Proclamation.
7. Numerous applicants are seeking judicial review of the Enactments before the Federal Court. The AG of Alberta is moving for leave to intervene in two of these applications, which have been directed to be heard together: *Canadian Civil Liberties Association v. Attorney General of Canada* (“CCLA”)¹⁰ and *Canadian Constitution Foundation v. Attorney General of Canada* (“CCF”)¹¹.
8. The CCLA and CCF applications question the *vires* of the Enactments. Amongst other things, they question whether the preconditions in the legislation were met before the powers under the *Emergencies Act* were exercised.¹² A number of these legislative preconditions make direct reference to the provinces or otherwise implicitly invoke the principles of federalism.¹³ If granted leave to intervene, the AG of Alberta would bring a unique perspective to submissions on those issues.

⁶ SOR/2022-20 [Tab A]

⁷ P.C. 2022-107, SOR/2022-21 [Tab B]

⁸ P.C. 2022-108, SOR/2022-22 [Tab C]

⁹ Proclamation [Tab A]; *Emergencies Act*, s. 17(1)

¹⁰ Court File No. T-316-22 (“CCLA”)

¹¹ Court File No. T-347-22 (“CCF”)

¹² CCLA Notice of Application, Grounds for Application, paras. 5, 11, 12, 24, 38, 43, 44, 46 [Tab D]; CCF Notice of Application, Grounds for Application, paras. 8, 60, 67 [Tab E]

¹³ *Emergencies Act*, ss. 3, 17, 19, 25

9. The CCLA and CCF applications also raise constitutional issues, and the AG of Alberta is already intervening as of right in these matters on those issues.¹⁴

PART III: SUBMISSIONS

A. Test under Rule 110(c)

10. Rule 110 provides, in relevant part:

Where a question of general importance is raised in a proceeding, other than a question referred to in section 57 of the Act,

...

(c) the Attorney General of Canada and the attorney general of a province may apply for leave to intervene.¹⁵

11. Rule 110 creates a special role for attorneys general as interveners.¹⁶ This role is distinct from intervention under s. 57 of the *Federal Courts Act*, which is limited to constitutional questions, or under Rule 109, which concerns intervention generally.¹⁷ This special role for attorneys general as intervener is consistent with longstanding constitutional principles and arrangements pertaining to attorneys general, and reflects their special role in the legal system as being responsible on behalf of the Crown to protect and advance the public interest.¹⁸

12. An attorney general may be granted leave to intervene under Rule 110(c) if the proceeding raises “a question of general importance”. This is met where either:

- a. a serious question is raised in a proceeding that itself is of general importance; or

¹⁴ Previous letters from the AG of Alberta to the Federal Court [Tab F]

¹⁵ Rules, [Rule 110](#) (emphasis added)

¹⁶ *Tsleil-Waututh Nation v. Canada (Attorney General)*, [2017 FCA 102](#) at [para. 11](#) (“*TWN #1*”)

¹⁷ *TWN #1*, [para 11](#); *Federal Courts Act*, [RSC 1985, c. F-7](#), [s. 57](#); Rules, [Rule 109](#)

¹⁸ *TWN #1*, [paras. 14, 15](#); *Tsleil-Waututh Nation v. Canada (Attorney General)*, [2017 FCA 174](#) at [para. 22](#) (“*TWN #2*”)

- b. the question affects the interests of the government or the population in the relevant jurisdiction in a general way.¹⁹

13. The Court must then assess whether there is a nexus between the issues raised in the proceeding and the interests of the government and the population it serves.²⁰ Attorneys general are not required to demonstrate how their participation as an intervener will assist in the determination of a factual or legal issue related to the proceeding.²¹

14. If the motion is granted, the Court may impose conditions on the intervention with a view to securing “the just, most expeditious and least expensive determination of every proceeding on its merits”.²²

B. Application of Test to this Motion

15. The question of whether the Enactments were within the scope of power granted to the Governor in Council meets both descriptions of a “question of general importance”: it is a serious question of general importance, and also a question that affects the interests of the government and population of Alberta in a general way.

16. The AG of Alberta’s Notice of Motion outlines the five issues related to the interpretation of the *Emergencies Act* about which he intends to make submissions to demonstrate the clear nexus between the interests that he represents and the questions of importance raised in these proceedings.

(i) These Proceedings Raise Serious Questions of General Importance

17. The scope of powers granted to the Governor in Council by the *Emergencies Act* is a serious question of general importance. The proper declaration of a public order emergency under the *Emergencies Act* confers powers upon the Governor in

¹⁹ TWN #1 at [para. 18](#); TWN #2 at [para. 25](#)

²⁰ *Ignace v. Canada (Attorney General)*, 2019 FCA 266 at [para. 6](#)

²¹ TWN #2 at [para. 23](#)

²² TWN #2 at [para. 26](#); Rules, Rules [3](#), [53](#)

Council to regulate matters otherwise exclusively within provincial jurisdiction, such as regulation or prohibition of the use of specified property.²³ Indeed, the Enactments did engage such powers.²⁴

18. These questions of interpretation of the *Emergencies Act* will lead to judicial guidance on the permissible occasion and scope of federal intrusion into matters of provincial jurisdiction. That is a serious issue of general importance with a clear relationship to the interests of the AG of Alberta. As the chief legal officer of the Crown in right of Alberta, the AG of Alberta is a guardian of Albertans' interests.²⁵ As such, he has a genuine concern in development of the law regarding the *Emergencies Act*, particularly with respect to the conditions and limits of power it may confer on the Governor in Council at the expense of its provincial counterparts. Future invocations of the *Emergencies Act*, which may well affect Alberta, will depend on this jurisprudence.

19. The *Emergencies Act* is intended to be a legal tool of last resort, reserved for moments of true national crisis.²⁶ The AG of Alberta has an interest in advancing an interpretation that would ensure due respect to provincial powers, and give deference to legislative tools of the province and the province's decisions to use that legislation in respect of local matters.

(ii) These Proceedings Raise Questions Affecting Alberta

20. The proceedings also raise questions that affect Alberta in a general way, given the background of the Enactments. It is not just that judicial interpretation of key provisions of the *Emergencies Act* could affect Alberta if it is invoked again; these interpretive issues did arise in relation to Alberta.

²³ *Emergencies Act*, [s. 19\(1\)\(a\)\(iii\)](#); *Constitution Act, 1867*, [30 & 31 Victoria, c. 3 \(UK\)](#), [s. 92\(13\)](#)

²⁴ *Emergency Economic Measures Order*, s. 2(1) [Tab C]

²⁵ TWN #1, [paras. 14, 15](#); TWN #2, [para. 22](#)

²⁶ *Emergencies Act*, [s. 3](#)

21. In particular, the invocation of the *Emergencies Act* affects the interests of the province in the following ways:

- i. The Governor in Council did not geographically limit the Enactments, instead making them applicable to the entire country (including Alberta).²⁷ The permissibility of such a broad declaration in these circumstances is a question affecting Alberta in a general way.
- ii. The *Emergencies Act* was invoked in Alberta notwithstanding that Alberta dealt with its own localized protests using existing legislative tools. In particular, the use of existing law-enforcement tools, such as the provincial *Traffic Safety Act* and the federal *Criminal Code*,²⁸ were what precipitated the end of the Coutts Blockade.²⁹ The proper interpretation of “national emergency” in the *Emergencies Act*, and particularly how to determine if a matter “exceeds the capacity or authority of a province to deal with it”, is a question affecting Alberta in a general way.³⁰
- iii. The *Emergencies Act* contains a clear obligation to consult the province’s lieutenant governor in council before declaring a public order emergency.³¹ The proper weight to be given to the views that Alberta expresses in such consultation is a question affecting Alberta in a general way.

22. Alberta is not a stranger to the issues raised in these proceedings. The interests of the province and its citizens were directly engaged by the invocation of the *Emergencies Act* and the declaration of public order emergency that extended to include Alberta. Those interests may be directly affected in such a manner again in

²⁷ Proclamation [Tab A]

²⁸ *Traffic Safety Act*, [RSA 2000, c. T-6](#); *Criminal Code*, [RSC 1985, c. C-46](#)

²⁹ Andrews Affidavit, paras. 6 to 10 [Motion Record, Tab 2]

³⁰ *Emergencies Act*, [s. 3\(a\)](#)

³¹ *Emergencies Act*, [s. 25\(1\)](#)

future situations in which the Government of Canada wishes to use the *Emergencies Act*. The judicial resolution of the issues raised in the proceedings is therefore of general interest to Alberta.

C. The Intervention is Consistent with a Just, Expeditious Determination

23. The AG of Alberta will contribute to a just, expeditious determination, and will not unduly delay or complicate the proceedings.

24. The AG of Alberta is already intervening as of right in these matters on the constitutional issues raised.³² Permitting its intervention in respect of the non-constitutional issues identified in this Motion would not increase the number of participants in these proceedings.

25. The AG of Alberta's arguments do not expand the scope of the matters before the Court. Rather, they offer additional argument and perspective on the interpretation of the *Emergencies Act*, as raised by the Notices of Application.³³ The AG of Alberta's perspective is unique, and will not be adequately asserted by any of the existing parties. A provincial perspective on these interpretive issues will contribute to a just determination, as these issues raise the interplay between federal and provincial levels (often implicit in the very wording of the provisions).

PART IV: ORDER SOUGHT

26. The AG of Alberta requests an order:

- i. Granting leave to intervene in these Applications to make submissions on non-constitutional issues;
- ii. Permitting the filing of a joint memorandum of fact and law in respect of both these matters, not to exceed 20 pages, addressing all of the

³² Previous letters from the AG of Alberta to the Federal Court [Tab F]

³³ CCLA Notice of Application, Grounds for Application, paras. 5, 10-12, 14, 15, 22, 24, 38, 46, 47, 49, 51 [Tab D]; CCF Notice of Application, Grounds for Application, paras. 7, 8, 27-29, 60-67 [Tab E]

issues (constitutional and non-constitutional) about which he will be making submissions; and

- iii. Permitting time for oral submissions at the hearing, not to exceed 20 minutes.

Signed this 14th day of April, 2022



ALBERTA JUSTICE AND SOLICITOR GENERAL

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PART V: INDEX OF AUTHORITIES

Cases

1. *Tsleil-Waututh Nation v. Canada (Attorney General)*, [2017 FCA 102](#)
2. *Tsleil-Waututh Nation v. Canada (Attorney General)*, [2017 FCA 174](#)
3. *Ignace v. Canada (Attorney General)*, [2019 FCA 266](#)

Statutes and Rules

1. *Federal Courts Rules*, [SOR/98-106](#)
2. *Emergencies Act*, [RSC 1985, c. 22 \(4th Supp.\)](#)
3. *Federal Courts Act*, [RSC 1985, c. F-7](#)
4. *Constitution Act, 1867*, [30 & 31 Victoria, c. 3 \(UK\)](#)
5. *Traffic Safety Act*, [RSA 2000, c. T-6](#)
6. *Criminal Code*, [RSC 1985, c. C-46](#)

Additional Documents

Tab A	<i>Proclamation Declaring a Public Order Emergency</i> , SOR/2022-20
Tab B	<i>Emergency Measures Regulations</i> , P.C. 2022-107, SOR/2022-21
Tab C	<i>Emergency Economic Measures Order</i> , P.C. 2022-108, SOR/2022-22
Tab D	CCLA Notice of Application (Relevant Excerpts)
Tab E	CCF Notice of Application (Relevant Excerpts)
Tab F	Letters from the AG of Alberta to the Federal Court

TAB A

Canada Gazette

Part II



Gazette du Canada

Partie II

OTTAWA, TUESDAY, FEBRUARY 15, 2022

OTTAWA, LE MARDI 15 FÉVRIER 2022

Registration
SOR/2022-20 February 15, 2022

EMERGENCIES ACT

Proclamation Declaring a Public Order Emergency

Mary May Simon

[L.S.]

Canada

ELIZABETH THE SECOND, by the Grace of God of the
United Kingdom, Canada and Her other Realms and
Territories QUEEN, Head of the Commonwealth, De-
fender of the Faith.

François Daigle
Deputy Attorney General of Canada

Great Seal of Canada

TO ALL WHOM these presents shall come or whom the
same may in any way concern,

GREETING:

A Proclamation

Whereas the Governor in Council believes, on reasonable
grounds, that a public order emergency exists and neces-
sitates the taking of special temporary measures for deal-
ing with the emergency;

Whereas the Governor in Council has, before declar-
ing a public order emergency and in accordance with
subsection 25(1) of the *Emergencies Act*, consulted the
Lieutenant Governor in Council of each province, the

Enregistrement
DORS/2022-20 Le 15 février 2022

LOI SUR LES MESURES D'URGENCE

Proclamation déclarant une urgence d'ordre public

Mary May Simon

[S.L.]

Canada

ELIZABETH DEUX, par la Grâce de Dieu, REINE du
Royaume-Uni, du Canada et de ses autres royaumes
et territoires, Chef du Commonwealth, Défenseur de
la Foi.

Le sous-procureur général du Canada,
François Daigle

Grand sceau du Canada

À TOUS CEUX à qui les présentes parviennent ou qu'elles
peuvent de quelque manière concerner,

SALUT:

Proclamation

Attendu que la gouverneure en conseil croit, pour des
motifs raisonnables, qu'il se produit un état d'urgence jus-
tifiant en l'occurrence des mesures extraordinaires à titre
temporaire;

Attendu que la gouverneure en conseil a, conformément
au paragraphe 25(1) de la *Loi sur les mesures d'urgence*,
consulté le lieutenant-gouverneur en conseil de chaque
province, les commissaires du Yukon et des Territoires du

Commissioners of Yukon and the Northwest Territories, acting with consent of their respective Executive Councils, and the Commissioner of Nunavut;

Now Know You that We, by and with the advice of Our Privy Council for Canada, pursuant to subsection 17(1) of the *Emergencies Act*, do by this Our Proclamation declare that a public order emergency exists throughout Canada and necessitates the taking of special temporary measures for dealing with the emergency;

And We do specify the emergency as constituted of

(a) the continuing blockades by both persons and motor vehicles that is occurring at various locations throughout Canada and the continuing threats to oppose measures to remove the blockades, including by force, which blockades are being carried on in conjunction with activities that are directed toward or in support of the threat or use of acts of serious violence against persons or property, including critical infrastructure, for the purpose of achieving a political or ideological objective within Canada,

(b) the adverse effects on the Canadian economy — recovering from the impact of the pandemic known as the coronavirus disease 2019 (COVID-19) — and threats to its economic security resulting from the impacts of blockades of critical infrastructure, including trade corridors and international border crossings,

(c) the adverse effects resulting from the impacts of the blockades on Canada's relationship with its trading partners, including the United States, that are detrimental to the interests of Canada,

(d) the breakdown in the distribution chain and availability of essential goods, services and resources caused by the existing blockades and the risk that this breakdown will continue as blockades continue and increase in number, and

(e) the potential for an increase in the level of unrest and violence that would further threaten the safety and security of Canadians;

And We do further specify that the special temporary measures that may be necessary for dealing with the emergency, as anticipated by the Governor in Council, are

(a) measures to regulate or prohibit any public assembly — other than lawful advocacy, protest or dissent — that may reasonably be expected to lead to a breach of the peace, or the travel to, from or within any specified area, to regulate or prohibit the use of specified property, including goods to be used with respect to a

Nord-Ouest agissant avec l'agrément de leur conseil exécutif respectif et le commissaire du Nunavut avant de faire la déclaration de l'état d'urgence,

Sachez que, sur et avec l'avis de Notre Conseil privé pour le Canada, Nous, en vertu du paragraphe 17(1) de la *Loi sur les mesures d'urgence*, par Notre présente proclamation, déclarons qu'il se produit dans tout le pays un état d'urgence justifiant en l'occurrence des mesures extraordinaires à titre temporaire;

Sachez que Nous décrivons l'état d'urgence comme prenant la forme suivante :

a) les blocages continus mis en place par des personnes et véhicules à différents endroits au Canada et les menaces continues proférées en opposition aux mesures visant à mettre fin aux blocages, notamment par l'utilisation de la force, lesquels blocages ont un lien avec des activités qui visent à favoriser l'usage de la violence grave ou de menaces de violence contre des personnes ou des biens, notamment les infrastructures essentielles, dans le but d'atteindre un objectif politique ou idéologique au Canada,

b) les effets néfastes sur l'économie canadienne — qui se relève des effets de la pandémie de la maladie à coronavirus 2019 (COVID-19) — et les menaces envers la sécurité économique du Canada découlant des blocages d'infrastructures essentielles, notamment les axes commerciaux et les postes frontaliers internationaux,

c) les effets néfastes découlant des blocages sur les relations qu'entretient le Canada avec ses partenaires commerciaux, notamment les États-Unis, lesquels effets sont préjudiciables aux intérêts du Canada,

d) la rupture des chaînes de distribution et de la mise à disposition de ressources, de services et de denrées essentiels causée par les blocages existants et le risque que cette rupture se perpétue si les blocages continuent et augmentent en nombre,

e) le potentiel d'augmentation du niveau d'agitation et de violence qui menaceraient davantage la sécurité des Canadiens;

Sachez que Nous jugeons les mesures d'intervention ci-après nécessaires pour faire face à l'état d'urgence :

a) des mesures pour réglementer ou interdire les assemblées publiques — autre que les activités licites de défense d'une cause, de protestation ou de manifestation d'un désaccord — dont il est raisonnable de penser qu'elles auraient pour effet de troubler la paix, ou les déplacements à destination, en provenance ou à l'intérieur d'une zone désignée, pour réglementer ou

blockade, and to designate and secure protected places, including critical infrastructure,

(b) measures to authorize or direct any person to render essential services of a type that the person is competent to provide, including services related to removal, towing and storage of any vehicle, equipment, structure or other object that is part of a blockade anywhere in Canada, to relieve the impacts of the blockades on Canada's public and economic safety, including measures to identify those essential services and the persons competent to render them and the provision of reasonable compensation in respect of services so rendered,

(c) measures to authorize or direct any person to render essential services to relieve the impacts of the blockade, including to regulate or prohibit the use of property to fund or support the blockade, to require any crowdfunding platform and payment processor to report certain transactions to the Financial Transactions and Reports Analysis Centre of Canada and to require any financial service provider to determine whether they have in their possession or control property that belongs to a person who participates in the blockade,

(d) measures to authorize the Royal Canadian Mounted Police to enforce municipal and provincial laws by means of incorporation by reference,

(e) the imposition of fines or imprisonment for contravention of any order or regulation made under section 19 of the *Emergencies Act*; and

(f) other temporary measures authorized under section 19 of the *Emergencies Act* that are not yet known.

In testimony whereof, We have caused this Our Proclamation to be published and the Great Seal of Canada to be affixed to it.

WITNESS:

Our Right Trusty and Well-beloved Mary May Simon, Chancellor and Principal Companion of Our Order of Canada, Chancellor and Commander of Our Order of Military Merit, Chancellor and Commander of Our Order of Merit of the Police Forces, Governor General and Commander-in-Chief of Canada.

interdire l'utilisation de biens désignés, notamment les biens utilisés dans le cadre d'un blocage, et pour désigner et aménager des lieux protégés, notamment les infrastructures essentielles,

b) des mesures pour habiliter toute personne compétente à fournir des services essentiels ou lui ordonner de fournir de tels services, notamment l'enlèvement, le remorquage et l'entreposage de véhicules, d'équipement, de structures ou de tout autre objet qui font partie d'un blocage n'importe où au Canada, afin de pallier les effets des blocages sur la sécurité publique et économique du Canada, notamment des mesures pour cerner ces services essentiels et les personnes compétentes à les fournir, ainsi que le versement d'une indemnité raisonnable pour ces services,

c) des mesures pour habiliter toute personne à fournir des services essentiels ou lui ordonner de fournir de tels services afin de pallier les effets des blocages, notamment des mesures pour réglementer ou interdire l'usage de biens en vue de financer ou d'appuyer les blocages, pour exiger de toute plateforme de sociofinancement et de tout fournisseur de traitement de paiement qu'il déclare certaines opérations au Centre d'analyse des opérations et déclarations financières du Canada et pour exiger de tout fournisseur de services financiers qu'il vérifie si des biens qui sont en sa possession ou sous son contrôle appartiennent à une personne qui participe à un blocage,

d) des mesures pour habiliter la Gendarmerie royale du Canada à appliquer les lois municipales et provinciales au moyen de l'incorporation par renvoi,

e) en cas de contravention aux décrets ou règlements pris au titre de l'article 19 de la *Loi sur les mesures d'urgence*, l'imposition d'amendes ou de peines d'emprisonnement,

f) toute autre mesure d'intervention autorisée par l'article 19 de la *Loi sur les mesures d'urgence* qui est encore inconnue.

En foi de quoi, Nous avons pris et fait publier Notre présente Proclamation et y avons fait apposer le grand sceau du Canada.

TÉMOIN :

Notre très fidèle et bien-aimée Mary May Simon, chancelière et compagnon principal de Notre Ordre du Canada, chancelière et commandeur de Notre Ordre du mérite militaire, chancelière et commandeur de Notre Ordre du mérite des corps policiers, gouverneure générale et commandante en chef du Canada.

At Our Government House, in Our City of Ottawa, this
fourteenth day of February in the year of Our Lord two
thousand and twenty-two and in the seventy-first year of
Our Reign.

BY COMMAND,

Simon Kennedy
Deputy Registrar General of Canada

À Notre hôtel du gouvernement, en Notre ville d'Ottawa,
ce quatorzième jour de février de l'an de grâce deux mille
vingt-deux, soixante et onzième de Notre règne.

PAR ORDRE,

Le sous-registraire général du Canada,
Simon Kennedy

TAB B

Registration
SOR/2022-21 February 15, 2022

EMERGENCIES ACT

P.C. 2022-107 February 15, 2022

Whereas the Governor in Council has, by a proclamation made pursuant to subsection 17(1) of the *Emergencies Act*^a, declared that a public order emergency exists;

And whereas the Governor in Council believes on reasonable grounds, that the regulation or prohibition of public assemblies in the areas referred to in these Regulations are necessary;

Therefore, Her Excellency the Governor General in Council, on the recommendation of the Minister of Public Safety and Emergency Preparedness, pursuant to subsection 19(1) of the *Emergencies Act*^a, makes the annexed *Emergency Measures Regulations*.

Emergency Measures Regulations

Interpretation

1 The following definitions apply to these Regulations

Act means the *Emergencies Act* (*Loi*)

critical infrastructure means the following places, including any land on which they are located:

- (a) airports, aerodromes, heliports, harbours, ports, piers, lighthouses, canals, railway stations, railways, tramway lines, bus stations, bus depots and truck depots;
- (b) infrastructure for the supply of utilities such as water, gas, sanitation and telecommunications;
- (c) international and interprovincial bridges and crossings;
- (d) power generation and transmission facilities;
- (e) hospitals and locations where COVID-19 vaccines are administered;
- (f) trade corridors and international border crossings, including ports of entry, ferry terminals, customs offices, bonded warehouses, and sufferance warehouses. (*infrastructures essentielles*)

^a R.S., c. 22 (4th Supp.)

Enregistrement
DORS/2022-21 Le 15 février 2022

LOI SUR LES MESURES D'URGENCE

C.P. 2022-107 Le 15 février 2022

Attendu que la gouverneure en conseil a, par proclamation prise en vertu du paragraphe 17(1) de la *Loi sur les mesures d'urgence*^a, déclaré qu'il se produit un état d'urgence;

Attendu que la gouverneure en conseil croit, pour des motifs raisonnables, qu'il est fondé de réglementer ou d'interdire des assemblées publiques dans les endroits visés,

À ces causes, sur recommandation du ministre de la Sécurité publique et de la Protection civile et en vertu du paragraphe 19(1) de la *Loi sur les mesures d'urgence*^a, Son Excellence la Gouverneure générale en conseil prend le *Règlement sur les mesures d'urgences*, ci-après.

Règlement sur les mesures d'urgences

Définitions

1 Les définitions qui suivent s'appliquent au présent règlement.

agent de la paix Tout officier de police ou agent de police employé à la préservation et au maintien de la paix publique. (*peace officer*)

étranger S'entend au sens du paragraphe 2(1) de la *Loi sur l'immigration et la protection des réfugiés*. (*foreign national*)

infrastructures essentielles Les lieux ci-après, y compris le terrain sur lequel ils sont situés :

- a) les aéroports, aérodromes, héliports, havres, ports, gares maritimes, jetées, phares, canaux, gares ferroviaires et chemins de fer, terminus d'autobus et garages d'autobus ou de camions;
- b) les infrastructures servant à la fourniture de services publics tels que l'eau, le gaz, l'assainissement et les télécommunications;
- c) les ponts et les ouvrages de franchissement internationaux et interprovinciaux;
- d) les installations de production et de transmission d'énergie;

^a L.R., ch. 22 (4e suppl.)

foreign national has the same meaning as in subsection 2(1) of the *Immigration and Refugee Protection Act* (*étranger*)

peace officer means a police officer, police constable, constable, or other person employed for the preservation and maintenance of the public peace (*agent de la paix*)

protected person has the same meaning as in subsection 95(2) of the *Immigration and Refugee Protection Act* (*personne protégée*)

Prohibition — public assembly

2 (1) A person must not participate in a public assembly that may reasonably be expected to lead to a breach of the peace by:

- (a) the serious disruption of the movement of persons or goods or the serious interference with trade;
- (b) the interference with the functioning of critical infrastructure; or
- (c) the support of the threat or use of acts of serious violence against persons or property.

Minor

(2) A person must not cause a person under the age of eighteen years to participate in an assembly referred to in subsection (1).

Prohibition — entry to Canada — foreign national

3 (1) A foreign national must not enter Canada with the intent to participate in or facilitate an assembly referred to in subsection 2(1).

Exemption

(2) Subsection (1) does not apply to

- (a) a person registered as an Indian under the *Indian Act*;
- (b) a person who has been recognized as a Convention refugee or a person in similar circumstances to those of a Convention refugee within the meaning of subsection 146(1) of the *Immigration and Refugee Protection Regulations* who is issued a permanent resident visa under subsection 139(1) of those regulations;
- (c) a person who has been issued a temporary resident permit within the meaning of subsection 24(1) of the *Immigration and Refugee Protection Act* and who seeks to enter Canada as a protected temporary resident under subsection 151.1(2) of the *Immigration and Refugee Protection Regulations*;

e) les hôpitaux et les endroits où sont administrés les vaccins contre la COVID-19;

f) les axes commerciaux et les postes frontaliers internationaux, y compris les points d'entrée, les bureaux de douanes, les entrepôts de stockage et les entrepôts d'attente. (*critical infrastructure*)

Loi La Loi sur les mesures d'urgence. (Act)

personne protégée S'entend au sens du paragraphe 95(2) de la *Loi sur l'immigration et la protection des réfugiés*. (*protected person*)

Interdiction – assemblée publique

2 (1) Il est interdit de participer à une assemblée publique dont il est raisonnable de penser qu'elle aurait pour effet de troubler la paix par l'un des moyens suivants :

- a) en entravant gravement le commerce ou la circulation des personnes et des biens;
- b) en entravant le fonctionnement d'infrastructures essentielles;
- c) en favorisant l'usage de la violence grave ou de menaces de violence contre des personnes ou des biens.

Mineur

(2) Il est interdit de faire participer une personne âgée de moins de dix-huit ans à une assemblée visée au paragraphe (1).

Interdiction – entrée au Canada – étranger

3 (1) Il est interdit à l'étranger d'entrer au Canada avec l'intention de participer à une assemblée visée au paragraphe 2(1) ou de faciliter une telle assemblée.

Exemption

(2) Le paragraphe (1) ne s'applique pas aux personnes suivantes :

- a) une personne inscrite à titre d'Indien sous le régime de la *Loi sur les Indiens*;
- b) la personne reconnue comme réfugié au sens de la Convention, ou la personne dans une situation semblable à celui-ci au sens du paragraphe 146(1) du *Règlement sur l'immigration et la protection des réfugiés*, qui est titulaire d'un visa de résident permanent délivré aux termes du paragraphe 139(1) de ce règlement;
- c) la personne qui est titulaire d'un permis de séjour temporaire au sens du paragraphe 24(1) de la *Loi sur l'immigration et la protection des réfugiés* et qui cherche à entrer au Canada à titre de résident temporaire protégé aux termes du paragraphe 151.1(2) du *Règlement sur l'immigration et la protection des réfugiés*;

(d) a person who seeks to enter Canada for the purpose of making a claim for refugee protection;

(e) a protected person;

(f) a person or any person in a class of persons whose presence in Canada, as determined by the Minister of Citizenship and Immigration or the Minister of Public Safety and Emergency Preparedness, is in the national interest.

Travel

4 (1) A person must not travel to or within an area where an assembly referred to in subsection 2(1) is taking place.

Minor — travel near public assembly

(2) A person must not cause a person under the age of eighteen years to travel to or within 500 metres of an area where an assembly referred to in subsection 2(1) is taking place.

Exemptions

(3) A person is not in contravention of subsections (1) and (2) if they are

(a) a person who, within of the assembly area, resides, works or is moving through that area for reasons other than to participate in or facilitate the assembly;

(b) a person who, within the assembly area, is acting with the permission of a peace officer or the Minister of Public Safety and Emergency Preparedness;

(c) a peace officer; or

(d) an employee or agent of the government of Canada or a province who is acting in the execution of their duties.

Use of property — prohibited assembly

5 A person must not, directly or indirectly, use, collect, provide make available or invite a person to provide property to facilitate or participate in any assembly referred to in subsection 2(1) or for the purpose of benefiting any person who is facilitating or participating in such an activity.

Designation of protected places

6 The following places are designated as protected and may be secured:

(a) critical infrastructures;

(b) *Parliament Hill* and the *parliamentary precinct* as they are defined in section 79.51 of the *Parliament of Canada Act*;

(d) la personne qui cherche à entrer au Canada afin de faire une demande d'asile;

(e) la personne protégée;

(f) sa présence au Canada est, individuellement ou au titre de son appartenance à une catégorie de personnes, selon ce que conclut le ministre de la Citoyenneté et de l'Immigration ou le ministre de la Sécurité publique et de la Protection civile, dans l'intérêt national.

Déplacements

4 (1) Il est interdit de se déplacer à destination ou à l'intérieur d'une zone où se tient une assemblée visée au paragraphe 2(1).

Déplacements à proximité d'une assemblée publique – mineur

(2) Il est interdit de faire déplacer une personne âgée de moins de dix-huit ans, à destination ou à moins de 500 mètres de la zone où se tient une assemblée visée au paragraphe 2(1).

Exemptions

(3) Ne contrevient pas aux paragraphes (1) et (2) :

(a) la personne qui réside, travaille ou circule dans la zone de l'assemblée, pour des motifs autres que de prendre part à l'assemblée ou la faciliter;

(b) la personne qui, relativement à la zone d'assemblée, agit avec la permission d'un agent de la paix ou du ministre de la Sécurité publique et de la Protection civile;

(c) l'agent de la paix;

(d) l'employé ou le mandataire du gouvernement du Canada ou d'une province qui agit dans l'exercice de ses fonctions.

Utilisation de biens – assemblée interdite

5 Il est interdit, directement ou non, d'utiliser, de réunir, de rendre disponibles ou de fournir des biens — ou d'inviter une autre personne à le faire — pour participer à toute assemblée visée au paragraphe 2(1) ou faciliter une telle assemblée ou pour en faire bénéficier une personne qui participe à une telle assemblée ou la facilite.

Désignation de lieux protégés

6 Les lieux suivants sont protégés et peuvent être aménagés :

(a) les infrastructures essentielles;

(b) la *cité parlementaire* et la *Colline parlementaire* au sens de l'article 79.51 de la *Loi sur le Parlement du Canada*;

(c) official residences;

(d) government buildings and defence buildings

(e) any property that is a building, structure or part thereof that primarily serves as a monument to honour persons who were killed or died as a consequence of a war, including a war memorial or cenotaph, or an object associated with honouring or remembering those persons that is located in or on the grounds of such a building or structure, or a cemetery;

(f) any other place as designated by the Minister of Public Safety and Emergency Preparedness.

Direction to render essential goods and services

7 (1) Any person must make available and render the essential goods and services requested by the Minister of Public Safety and Emergency Preparedness, the Commissioner of the Royal Canadian Mounted Police or a person acting on their behalf for the removal, towing and storage of any vehicle, equipment, structure or other object that is part of a blockade.

Method of request

(2) Any request made under subsection (1) may be made in writing or given verbally by a person acting on their behalf.

Verbal request

(3) Any verbal request must be confirmed in writing as soon as possible.

Period of request

8 A person who, in accordance with these Regulations, is subject to a request under section 7 to render essential goods and services must comply immediately with that request until the earlier of any of the following:

(a) the day referred to in the request;

(b) the day on which the declaration of the public order emergency expires or is revoked; or

(c) the day on which these Regulations are repealed.

Compensation for essential goods and services

9 (1) Her Majesty in right of Canada is to provide reasonable compensation to a person for any goods or services that they have rendered at their request under section 7, which amount must be equal to the current market price for those goods or services of that same type, in the area in which the goods or services are rendered.

c) les résidences officielles;

d) les immeubles gouvernementaux et les immeubles de la défense;

e) tout ou partie d'un bâtiment ou d'une structure servant principalement de monument érigé en l'honneur des personnes tuées ou décédées en raison d'une guerre — notamment un monument commémoratif de guerre ou un cenotaphe —, d'un objet servant à honorer ces personnes ou à en rappeler le souvenir et se trouvant dans un tel bâtiment ou une telle structure ou sur le terrain où ceux-ci sont situés, ou d'un cimetière;

f) tout autre lieu désigné par le ministre de la Sécurité publique et de la Protection civile.

Ordre de fournir des biens et services essentiels

7 (1) Toute personne doit rendre disponibles et fournir les biens et services essentiels demandés par le ministre de la Sécurité publique et de la Protection civile, du commissaire de la Gendarmerie royale du Canada, ou la personne agissant en leur nom pour l'enlèvement, le remorquage et l'entreposage de véhicules, d'équipement, des structures ou de tout autre objet qui composent un blocage.

Modalités

(2) La demande faite au titre du paragraphe (1) peut être faite par écrit ou communiquée verbalement ou la personne agissant en son nom.

Demande verbale

(3) La demande verbale est confirmée par écrit dès que possible.

Période de validité

8 Quiconque fait l'objet d'une demande au titre de l'article 7 pour la fourniture de biens et de services essentiels est tenu de s'y conformer dans les plus brefs délais jusqu'à la première des dates suivantes :

a) la date indiqué à la demande;

b) la date de l'abrogation ou la cessation d'effet de la déclaration d'état d'urgence;

c) la date de l'abrogation du présent règlement.

Indemnisation pour les biens et services essentiels

9 (1) Sa Majesté du chef du Canada accorde une indemnité raisonnable à la personne pour les biens fournis et les services rendus à sa demande aux termes de l'article 7 dont le montant équivaut au taux courant du marché pour les biens et services de même type, dans la région où les biens ont été fournis ou où les services ont été rendus.

Compensation

(2) Any person who suffers loss, injury or damage as a result of anything done or purported to be done under these Regulations may make an application for compensation in accordance with Part V of the *Emergencies Act* and any regulations made under that Part, as the case may be.

Compliance — peace officer

10 (1) In the case of a failure to comply with these Regulations, any peace officer may take the necessary measures to ensure the compliance with these Regulations and with any provincial or municipal laws and allow for the prosecution for that failure to comply.

Contravention of Regulations

(2) In the case of a failure to comply with these Regulations, any peace officer may take the necessary measures to ensure the compliance and allow for the prosecution for that failure to comply

(a) on summary conviction, to a fine not exceeding five hundred dollars or to imprisonment for a term not exceeding six months or to both; or

(b) on indictment, to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding five years or to both.

Coming into force

11 This Order comes into force on the day on which it is registered.

Indemnisation

(2) Toute personne qui subit des dommages corporels ou matériels entraînés par des actes accomplis, ou censés l'avoir été, en application du présent règlement peut, à cet égard, présenter une demande d'indemnisation conformément à la partie V de la *Loi sur les mesures d'urgence* et à ses règlements d'application, le cas échéant.

Application des lois

10 (1) En cas de contravention au présent règlement, tout agent de la paix peut prendre les mesures nécessaires pour faire observer le présent règlement ou toutes lois provinciales ou municipales et permettre l'engagement de poursuites pour cette contravention.

Pénalités

(2) Quiconque contrevient au présent règlement est coupable d'une infraction passible, sur déclaration de culpabilité :

a) par procédure sommaire, d'une amende maximale de 500 \$ et d'un d'emprisonnement maximal de six mois, ou de l'une de ces peines;

b) par mise en accusation, d'une amende maximale de 5 000 \$ et d'un emprisonnement maximal de cinq ans, ou de l'une de ces peines.

Entrée en vigueur

11 Le présent règlement entre en vigueur à la date de son enregistrement.

TAB C

Registration
SOR/2022-22 February 15, 2022

EMERGENCIES ACT

P.C. 2022-108 February 15, 2022

Whereas the Governor in Council has, by a proclamation made pursuant to subsection 17(1) of the *Emergencies Act*, declared that a public order emergency exists;

And whereas the Governor in Council has reasonable grounds to believe that the measures with respect to property referred to in this Order are necessary;

Therefore, Her Excellency the Governor General in Council, on the recommendation of the Minister of Public Safety and Emergency Preparedness, pursuant to subsection 19(1) of the *Emergencies Act*, makes the annexed *Emergency Economic Measures Order*.

Emergency Economic Measures Order

Definitions

1 The following definitions apply to this Order:

designated person means any individual or entity that is engaged, directly or indirectly, in an activity prohibited by sections 2 to 5 of the *Emergency Measures Regulations*. (*personne désignée*)

entity includes a corporation, trust, partnership, fund, unincorporated association or organization or foreign state. (*entité*)

Duty to cease dealings

2 (1) Any entity set out in section 3 must, upon the coming into force of this Order, cease

(a) dealing in any property, wherever situated, that is owned, held or controlled, directly or indirectly, by a designated person or by a person acting on behalf of or at the direction of that designated person;

(b) facilitating any transaction related to a dealing referred to in paragraph (a);

(c) making available any property, including funds or virtual currency, to or for the benefit of a designated person or to a person acting on behalf of or at the direction of a designated person; or

Enregistrement
DORS/2022-22 Le 15 février 2022

LOI SUR LES MESURES D'URGENCE

C.P. 2022-108 Le 15 février 2022

Attendu que la gouverneure en conseil a, par proclamation prise en vertu du paragraphe 17(1) de la *Loi sur les mesures d'urgence*, déclaré qu'il existe un état d'urgence;

Attendu que la gouverneure en conseil a des motifs raisonnables de croire que les mesures relatives aux biens prévues dans le présent décret sont fondées,

À ces causes, sur recommandation du ministre de la Sécurité publique et de la Protection civile et en vertu du paragraphe 19(1) de la *Loi sur les mesures d'urgence*, Son Excellence la Gouverneure générale en conseil prend le *Décret sur les mesures économiques d'urgence*, ci-après.

Décret sur les mesures économiques d'urgence

Définitions

1 Les définitions qui suivent s'appliquent au présent décret :

entité S'entend notamment d'une personne morale, d'une fiducie, d'une société de personne, d'un fonds, d'une organisation ou d'une association dotée de la personnalité morale ou d'un État étranger. (*entity*)

personne désignée Toute personne physique ou entité qui participe, même indirectement, à l'une ou l'autre des activités interdites au titre des articles 2 à 5 du *Règlement sur les mesures d'urgence*. (*designated person*)

Obligations de cesser les opérations

2 (1) Dès l'entrée en vigueur du présent décret, les entités visées à l'article 3 doivent cesser :

a) toute opération portant sur un bien, où qu'il se trouve, appartenant à une personne désignée ou détenu ou contrôlé par elle ou pour son compte ou suivant ses instructions;

b) toute transaction liée à une opération visée à l'alinéa a) ou d'en faciliter la conclusion;

c) de rendre disponible des biens — notamment des fonds ou de la monnaie virtuelle — à une personne désignée ou à une personne agissant pour son compte

(d) providing any financial or related services to or for the benefit of any designated person or acquire any such services from or for the benefit of any such person or entity.

Insurance policy

(2) Paragraph 2(1)(d) does not apply in respect of any insurance policy which was valid prior to the coming in force of this Order other than an insurance policy for any vehicle being used in a public assembly referred to in subsection 2(1) of the *Emergency Measures Regulations*.

Duty to determine

3 The following entities must determine on a continuing basis whether they are in possession or control of property that is owned, held or controlled by or on behalf of a designated person:

(a) *authorized foreign banks*, as defined in section 2 of the *Bank Act*, in respect of their business in Canada, and banks regulated by that Act;

(b) cooperative credit societies, savings and credit unions and caisses populaires regulated by a provincial Act and associations regulated by the *Cooperative Credit Associations Act*;

(c) *foreign companies*, as defined in subsection 2(1) of the *Insurance Companies Act*, in respect of their insurance business in Canada;

(d) *companies, provincial companies and societies*, as those terms are defined in subsection 2(1) of the *Insurance Companies Act*;

(e) fraternal benefit societies regulated by a provincial Act in respect of their insurance activities and insurance companies and other entities regulated by a provincial Act that are engaged in the business of insuring risks;

(f) companies regulated by the *Trust and Loan Companies Act*;

(g) trust companies regulated by a provincial Act;

(h) loan companies regulated by a provincial Act;

(i) entities that engage in any activity described in paragraphs 5(h) and (h.1) of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*;

(j) entities authorized under provincial legislation to engage in the business of dealing in securities or to provide portfolio management or investment counselling services;

ou suivant ses instructions, ou au profit de l'une ou l'autre de ces personnes;

d) de fournir des services financiers ou connexes à une personne désignée ou à son profit ou acquérir de tels services auprès d'elle ou à son profit.

Police d'assurance

(2) Toutefois, l'alinéa 2(1)d) ne s'applique pas à l'égard d'une police d'assurance effective — au moment de l'entrée en vigueur du présent décret — portant sur un véhicule autre que celui utilisé lors d'une assemblée publique visée au paragraphe 2(1) du *Règlement sur les mesures d'urgence*.

Vérification

3 Il incombe aux entités mentionnées ci-après de vérifier de façon continue si des biens qui sont en leur possession ou sous leur contrôle appartiennent à une personne désignée ou sont détenus ou contrôlés par elle ou pour son compte :

a) les banques étrangères autorisées, au sens de l'article 2 de la *Loi sur les banques*, dans le cadre de leurs activités au Canada, et les banques régies par cette loi;

b) les coopératives de crédit, caisses d'épargne et de crédit et caisses populaires régies par une loi provinciale et les associations régies par la *Loi sur les associations coopératives de crédit*;

c) les sociétés étrangères, au sens du paragraphe 2(1) de la *Loi sur les sociétés d'assurances*, dans le cadre de leurs activités d'assurance au Canada;

d) les sociétés, les sociétés de secours et les sociétés provinciales, au sens du paragraphe 2(1) de la *Loi sur les sociétés d'assurances*;

e) les sociétés de secours mutuel régies par une loi provinciale, dans le cadre de leurs activités d'assurance, et les sociétés d'assurances et autres entités régies par une loi provinciale qui exercent le commerce de l'assurance;

f) les sociétés régies par la *Loi sur les sociétés de fiducie et de prêt*;

g) les sociétés de fiducie régies par une loi provinciale;

h) les sociétés de prêt régies par une loi provinciale;

i) les entités qui se livrent à une activité visée aux alinéas 5h) et h.1) de la *Loi sur le recyclage des produits de la criminalité et le financement des activités terroristes*;

(k) entities that provide a platform to raise funds or virtual currency through donations; and

(l) entities that perform any of the following payment functions:

(i) the provision or maintenance of an account that, in relation to an electronic funds transfer, is held on behalf of one or more end users,

(ii) the holding of funds on behalf of an end user until they are withdrawn by the end user or transferred to another individual or entity,

(iii) the initiation of an electronic funds transfer at the request of an end user,

(iv) the authorization of an electronic funds transfer or the transmission, reception or facilitation of an instruction in relation to an electronic funds transfer, or

(v) the provision of clearing or settlement services.

j) les entités autorisées en vertu de la législation provinciale à se livrer au commerce des valeurs mobilières ou à fournir des services de gestion de portefeuille ou des conseils en placement;

k) les plateformes collaboratives et celles de monnaie virtuelle qui sollicitent des dons;

l) toute entité qui exécute l'une ou l'autre de fonctions suivantes :

(i) la fourniture ou la tenue d'un compte détenu au nom d'un ou de plusieurs utilisateurs finaux en vue d'un transfert électronique de fonds,

(ii) la détention de fonds au nom d'un utilisateur final jusqu'à ce qu'ils soient retirés par celui-ci ou transférés à une personne physique ou à une entité,

(iii) l'initiation d'un transfert électronique de fonds à la demande d'un utilisateur final,

(iv) l'autorisation de transfert électronique de fonds ou la transmission, la réception ou la facilitation d'une instruction en vue d'un transfert électronique de fonds,

(v) la prestation de services de compensation ou de règlement.

Registration requirement — FINTRAC

4 (1) The entities referred to in paragraphs 3(k) and (l) must register with the Financial Transactions and Reports Analysis Centre of Canada established by section 41 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* if they are in possession or control of property that is owned, held or controlled by or on behalf of a designated person.

Reporting obligation — suspicious transactions

(2) Those entities must also report to the Centre every financial transaction that occurs or that is attempted in the course of their activities and in respect of which there are reasonable grounds to suspect that

(a) the transaction is related to the commission or the attempted commission of a money laundering offence by a designated person; or

(b) the transaction is related to the commission or the attempted commission of a terrorist activity financing offence by a designated person.

Reporting obligation — other transactions

(3) Those entities must also report to the Centre the transactions and information set out in subsections 30(1)

Inscription obligatoire — Centre

4 (1) Les entités visées aux alinéas 3k) et l) doivent s'inscrire auprès du Centre d'analyse des opérations et déclarations financières du Canada constitué par l'article 41 de la *Loi sur le recyclage des produits de la criminalité et le financement des activités terroristes* s'ils ont en leur possession un bien appartenant à une personne désignée ou détenu ou contrôlé par elle ou pour son compte ou suivant ses instructions.

Opérations douteuses

(2) Elles doivent également déclarer au Centre toute opération financière effectuée ou tentée dans le cours de ses activités et à l'égard de laquelle il y a des motifs raisonnables de soupçonner qu'elle est liée à la perpétration — réelle ou tentée — par à une personne désignée :

a) soit d'une infraction de recyclage des produits de la criminalité;

b) soit d'une infraction de financement des activités terroristes.

Autres opérations

(3) Elles doivent également déclarer au Centre les opérations visées aux paragraphes 30(1) ou 33(1) du *Règlement*

and 33(1) of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations*.

Duty to disclose — RCMP or CSIS

5 Every entity set out in section 3 must disclose without delay to the Commissioner of the Royal Canadian Mounted Police or to the Director of the Canadian Security Intelligence Service

(a) the existence of property in their possession or control that they have reason to believe is owned, held or controlled by or on behalf of a designated person; and

(b) any information about a transaction or proposed transaction in respect of property referred to in paragraph (a).

Disclosure of information

6 A Government of Canada, provincial or territorial institution may disclose information to any entity set out in section 3, if the disclosing institution is satisfied that the disclosure will contribute to the application of this Order.

Immunity

7 No proceedings under the *Emergencies Act* and no civil proceedings lie against an entity for complying with this Order.

Coming into force

8 This Order comes into force on the day on which it is registered.

sur le recyclage des produits de la criminalité et le financement des activités terroristes.

Obligation de communication à la GRC et au SCRC

5 Toute entité visée à l'article 3 est tenue de communiquer, sans délai, au commissaire de la Gendarmerie royale du Canada ou au directeur du Service canadien du renseignement de sécurité :

a) le fait qu'elle croit que des biens qui sont en sa possession ou sous son contrôle appartiennent à une personne désignée ou sont détenus ou contrôlés par elle ou pour son compte;

b) tout renseignement portant sur une transaction, réelle ou projetée, mettant en cause des biens visés à l'alinéa a).

Communication

6 Toute institution fédérale, provinciale ou territoriale peut communiquer des renseignements au responsable d'une entité visée à l'article 3, si elle est convaincue que les renseignements aideront à l'application du présent décret.

Immunité

7 Aucune poursuite en vertu de la *Loi sur les mesures d'urgence* ni aucune procédure civile ne peuvent être intentées contre une entité qui se conforme au présent décret.

Entrée en vigueur

8 Le présent décret entre en vigueur à la date de son enregistrement.

TAB D



Court File No. T-316-22

FEDERAL COURT

CANADIAN CIVIL LIBERTIES ASSOCIATION

Applicant

- and -

ATTORNEY GENERAL OF CANADA

Respondent

Application for Judicial Review under Sections 18 and 18.1 of the
Federal Courts Act, R.S.C. 1985, c. F-7

NOTICE OF APPLICATION

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the applicant. The relief claimed by the applicant appears below.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard at 180 Queen Street West, Toronto, Ontario, M5V 3L6.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must file a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the applicant's solicitor or, if the applicant is self-represented, on the applicant, **WITHIN 10 DAYS** after being served with this notice of application.

so that they can justify resort to the federal *Emergencies Act* for the first time in Canadian history.

5. The *Emergencies Act*, however, contains stringent preconditions for its invocation. In recognition of the extreme nature of the powers that it grants and the risk of overreach and misuse, the legislative drafters included very high legal thresholds that had to be met before the powers under the Act could be used. Those thresholds have not been met. There is no nationwide public order emergency within the meaning of the Act. The protests can be, and in many cases already have been, managed under existing Canadian law. The government's proclamation of a national emergency on February 14, 2022, and the orders flowing from that proclamation, are therefore unlawful and unconstitutional.
6. The protests at issue began in late January 2022 when, following the imposition of a COVID-19 vaccine mandate for truck drivers crossing the Canada-United States border, a convoy of vehicles began travelling from British Columbia to Ontario. This convoy has since become known as the "Freedom Convoy". By January 28, 2022, the Freedom Convoy had arrived in Ottawa, along with thousands of loosely affiliated and unaffiliated protestors. It is now apparent that the protests take aim at measures beyond the vaccine mandate for cross-border truck drivers and raise more general concerns about governmental and regulatory responses to the pandemic.
7. As the protests in Ottawa continued into February, similar but smaller local protests sprang up in other parts of Canada, including in Winnipeg, Manitoba, and Enfield and Halifax, Nova Scotia. The most notable of these local protests included the blockading

from blockading or disrupting traffic. Police across the country have been called in to prepare for and respond to protests in numerous cities, where they have successfully limited disruptions to essential services while still ensuring that protestors can exercise their peaceful assembly rights. The courts have also been active, issuing injunctive relief targeting some of the most disruptive and harmful behaviour.

10. In sum, the vast majority of protests across this country have been handled by local authorities using existing laws, and indeed several provinces have stated that resorting to the *Emergencies Act* is unnecessary. Despite this fact, the federal government nevertheless proclaimed the existence of a public order emergency throughout the country.
11. The legislative thresholds have not been met and, for that reason, the *Emergency Proclamation* is unreasonable and *ultra vires*.
12. Legal resort to these powers requires that the executive have a reasonable basis for believing that there is (a) a threat to the security of Canada and (b) that threat is serious enough to be a national emergency. This requires showing, among other things, that the lives, health, or safety of Canadians has been seriously endangered, and that neither the provinces nor existing law are capable of dealing with that danger. The extraordinary powers granted under the *Emergencies Act* are reserved for unforeseen circumstances that the numerous laws and regulations of this country cannot address.

Protests and demonstrations — even loud and lengthy ones — do not fall within this category.

13. The government has failed to discharge its burden to establish either a threat to the security of Canada or a national emergency. The *Emergencies Act* does not permit the government to proclaim an emergency based on unspecified concerns about economic instability and international trade, a general sense of public unrest, or donations to a cause from people outside of Canada. Even the presence of a small number of dangerous individuals in specific locations, while deeply concerning and a proper priority for law enforcement officials, would not be enough to justify the proclamation of a *nation-wide* emergency. A proclamation of emergency cannot be grounded in nebulous or strained claims about unspecified danger.
14. Moreover, the provinces have shown that they are capable of dealing with the protests using existing law. The fact that some protests remained for longer than others, or were more disruptive than others, is not in and of itself an indication of a lack of capacity or legal powers. The most economically disruptive forms of protest, such as the blockades at ports of entry to Canada, were largely resolved with provincial powers and prior to the *Emergency Proclamation*. Likewise, the armed faction in Coutts was neutralized.
15. While the federal government and many Canadians may disagree with the nature and extent of the various municipal and provincial responses, this disagreement is no justification for resorting to the *Emergencies Act* to take control of provincial powers and blur the lines that federalism firmly draws.
16. The decision to invoke the *Emergencies Act* must also be scrutinized in light of the sweeping *Charter* implications of the regulations made in reliance on the *Emergency Proclamation* (i.e., the *Emergency Measures Regulations* and the *Emergency*

(a) espionage or sabotage that is against Canada or is detrimental to the interests of Canada or activities directed toward or in support of such espionage or sabotage,

(b) foreign influenced activities within or relating to Canada that are detrimental to the interests of Canada and are clandestine or deceptive or involve a threat to any person,

(c) activities within or relating to Canada directed toward or in support of the threat or use of acts of serious violence against persons or property for the purpose of achieving a political, religious or ideological objective within Canada or a foreign state, and

(d) activities directed toward undermining by covert unlawful acts, or directed toward or intended ultimately to lead to the destruction or overthrow by violence of, the constitutionally established system of government in Canada.

21. However, “threats to the security of Canada” do *not* include “lawful advocacy, protest or dissent”, unless it involves any of the activities referred to above.

22. Second, the situation must be serious enough to constitute a “national emergency”, which is defined in s. 3 of the *Emergencies Act* as follows:

For the purposes of this Act, a national emergency is an urgent and critical situation of a temporary nature that

(a) seriously endangers the lives, health or safety of Canadians and is of such proportions or nature as to exceed the capacity or authority of a province to deal with it, or

(b) seriously threatens the ability of the Government of Canada to preserve the sovereignty, security and territorial integrity of Canada

and that cannot be effectively dealt with under any other law of Canada.

23. Section 17(1) of the *Emergencies Act* authorizes the Governor in Council to proclaim a public order emergency upon believing, on reasonable grounds, that such an emergency exists and necessitates the taking of special temporary measures. In the

event that the effects of the emergency do not extend to the whole of Canada, s. 17(2)(c) requires that the proclamation specify the area(s) of Canada to which the emergency extends.

24. While the proclamation of a public order emergency persists, s. 19(1) of the *Emergencies Act* supplies the Governor in Council with the power to make such orders or regulations as are believed to be necessary for dealing with the emergency. However, pursuant to s. 19(3), this power must be exercised or performed in a manner that will not unduly impair the ability of any province to take measures for dealing with an emergency in the province and with the view of achieving, to the extent possible, concerted action with each province.

The Emergency Proclamation

25. The *Emergency Proclamation* was issued on February 14, 2022, pursuant to s. 17(1) of the *Emergencies Act*. It proclaimed that a public order emergency exists throughout the entirety of Canada.
26. The proclamation specifies that the emergency is principally the result of “blockades”. In particular, it states that the emergency is constituted of:

(a) the continuing blockades by both persons and motor vehicles that is occurring at various locations throughout Canada and the continuing threats to oppose measures to remove the blockades, including by force, which blockades are being carried on in conjunction with activities that are directed toward or in support of the threat or use of acts of serious violence against persons or property, including critical infrastructure, for the purpose of achieving a political or ideological objective within Canada,

control of property owned, held, or controlled by or on behalf of a designated person. If they are, the institutions must register with the Financial Transactions and Reports Analysis Centre of Canada (“FINTRAC”), pursuant to s. 4(1). These entities must also disclose, without delay, to the Commissioner of the Royal Canadian Mounted Police or to the Director of the Canadian Security Intelligence Service:

- (a) the existence of property in their possession or control that they have reason to believe is owned, held or controlled by or on behalf of a designated person; and
- (b) any information about a transaction or proposed transaction in respect of property referred to in paragraph (a).

The Emergency Proclamation Is Unreasonable and Ultra Vires

- 38. As with any exercise of authority granted by a federal statute, the *Emergency Proclamation* must be consistent with the scope of the statutory mandate and meet the requirements of its enabling legislation. In this regard, it fails.
- 39. The *Emergency Proclamation* is not justified in light of the legal and factual constraints that bear upon it, most notably the governing statutory scheme and the powers it confers, which broadly impact individuals’ *Charter*-protected rights.

Governing Statutory Scheme

- 40. The *Emergency Proclamation* fails to meet the two threshold requirements of the *Emergencies Act*: threats to the security of Canada and a national emergency.
- 41. The *Emergencies Act* requires that there be reasonable grounds to believe that these threshold requirements are met. This requires more than just speculation, suspicion,

political pressure, or even apprehension — there must be an objectively reasonable belief based on compelling and credible evidence.

42. The first threshold requirement — that there be threats to the security of Canada — is not met. None of the four threats set out in the *Canadian Security Intelligence Service Act* are present. A public protest does not qualify as “espionage or sabotage”, as required by s. 2(a). Even if that protest were a “foreign influenced activity” simply because it is partly supported by crowdfunding from other countries, it is neither clandestine nor deceptive; it also does not, as a whole, involve a threat to any person, as required by s. 2(b). While it is true that the protest — like any protest — is designed to active to achieve a political objective, there is no compelling evidence that this objective is generally being pursued by acts of “serious violence”, as required by s. 2(c). And there is likewise no sustainable suggestion that the constitutionally established system of government in Canada is being imperilled by covert unlawful acts or an “overthrow by violence”, as required by s. 2(d).
43. The second threshold requirement — that there be a “national emergency” — similarly is not met.
44. How the protests and blockades seriously endanger the lives, health, or safety of Canadians, as required by the definition of “national emergency”, is not apparent from either the *Emergency Proclamation* or the explanation tabled pursuant to s. 58(1) of the *Emergencies Act*. Disruption does not meet this threshold, and the actions at issue have been generally peaceful. While the *Emergency Proclamation* refers to adverse effects on the Canadian economy, it fails to demonstrate any connection between those effects

and the lives, health, and safety of Canadians. Although the proclamation refers to a supply chain breakdown, there is no compelling evidence that Canadians will go without necessities in a way that would endanger them — particularly not now given that the situation at the Ambassador Bridge and those in Fort Erie, Ontario, and Coutts, Alberta, have been resolved. The same is true of the proclamation’s oblique reference to adverse effects on Canada’s “relationship with its trading partners”. Finally, while there is a reference to a potential violence and unrest, the government must have some basis — beyond a large gathering of dissenters — for considering this potential to be real and substantial. It does not.

45. Even if there were a basis for believing that certain of the protests cause sufficient danger, the federal government goes too far in suggesting that danger is present throughout the entirety of the country. At most, a few localities are facing the acute effects of the protests. The vast majority of the country is not affected, much less endangered, by the protests — and yet, every person in Canada is now living under a proclaimed public safety emergency, and is subject to the orders made on the basis of that emergency.
46. However serious or widespread the danger at issue truly is, it is unreasonable to contend that it “exceed[s] the capacity or authority of a province to deal with it”. The protests *can* be effectively dealt with under other laws of Canada. These are also essential elements of a “national emergency”.
47. Among other things, the criminal law is more than capable of addressing all of the federal government’s concerns, through specific offences like mischief, unlawful

assembly, causing a disturbance, or nuisance, as well as the powers concomitant to arrest. Municipal by-laws also operate to similar effect.

48. As recent judicial orders have shown, injunctions are available to restrain the conduct said to be creating an emergency. Injunctions have a long history of being resorted to in order to deal with demonstrations or protests that cause economic harm. In relation to the current protests, injunctions have been granted to restrain the use of horns and vehicle idling, to enforce by-laws regarding the same, and to force protestors to leave the Ambassador Bridge. This latter injunction in particular has proved effective: the Bridge is now open, and it was opened before the proclamation of any federal emergency.
49. All of the foregoing laws can also be bolstered by the imposition of a *provincial state of emergency*. This is the approach Ontario's government has taken. On February 11, 2022 — four days before the federal government's invocation of the *Emergencies Act* — an emergency was already declared in the Province of Ontario, pursuant to O. Reg. 69/22. The next day, O. Reg. 71/22 [*Critical Infrastructure and Highways Regulation*] was enacted. Among other things, this regulation enjoins individuals from impeding access to critical infrastructure and highways and extends to police officers the power to order individuals to do the same. The overlap of the *Critical Infrastructure and Highways Regulation* and the *Emergency Measures Regulations* belies the contention that the provinces did not have the capacity to address the protests at issue.
50. Moreover, the *Critical Infrastructure and Highways Regulation* is backed by the force set out in the *Emergency Management and Civil Protection Act*, R.S.O. 1990, c. E.9, s.

7.0.11, which creates substantial fines for the contravention of emergency orders or the obstruction of persons performing duties conferred by such orders:

Offences

7.0.11 (1) Every person who fails to comply with an order under subsection 7.0.2 (4) or who interferes with or obstructs any person in the exercise of a power or the performance of a duty conferred by an order under that subsection is guilty of an offence and is liable on conviction,

(a) in the case of an individual, subject to clause (b), to a fine of not more than \$100,000 and for a term of imprisonment of not more than one year;

(b) in the case of an individual who is a director or officer of a corporation, to a fine of not more than \$500,000 and for a term of imprisonment of not more than one year; and

(c) in the case of a corporation, to a fine of not more than \$10,000,000.

Separate offence

(2) A person is guilty of a separate offence on each day that an offence under subsection (1) occurs or continues.

51. To an extent, the Government's precipitous invocation of the *Emergencies Act* appears to have been motivated by its view that the provinces have not gone far enough in addressing intraprovincial protest. However, this does not mean that the provinces lack the *capacity* or *authority* to deal with the protests, nor does it mean that that the laws of Canada are *incapable* of dealing with them. To the contrary, the provinces have all the tools they need. The *Emergencies Act* was not intended to provide the federal government a pathway to arrogate provincial powers to itself in circumstances where the provinces do not exercise those powers in the way the federal government would

have. Use of the Act in this way strains the balance that federalism demands and exceeds the intention behind the *Emergencies Act*.

Impact on Individuals' Charter-Protected Rights

52. The reasonableness of the Government's resort to the *Emergencies Act* must also have regard to the substantial, *Charter*-infringing impacts of the regulations that the *Emergency Proclamation* has enabled under s. 19(1) of the *Emergencies Act*.
53. The prohibitions set out in the *Emergency Measures Regulations* — namely, the Prohibition on Public Assembly, the Prohibition on Travel to an Assembly, and the Prohibition on Providing Property — offend fundamental freedoms enshrined in the *Charter*. In so doing, they inhibit basic and essential forms of democratic participation.
54. Each of these Prohibitions infringes s. 2(b) of the *Charter*, which protects freedom of expression. All of the prohibited activities contain expressive content, thereby falling within the protected sphere of free expression. The prohibition of those activities, in both purpose and effect, infringes that protection.
55. The Prohibition on Public Assembly and the Prohibition on Travel to an Assembly infringes s. 2(c) of the *Charter*, which protects freedom of peaceful assembly, for similar reasons. The former prohibition captures any assembly that may be “reasonably expected” to lead to a breach of the peace. In this way, it prohibits assembly *before it occurs* and before it becomes an assembly that *might* fall outside the scope of s. 2(d). By prohibiting assemblies that are by definition peaceful — or that at least have

TAB E

FEDERAL COURT

BETWEEN:

CANADIAN CONSTITUTION FOUNDATION

Applicant

– and –

ATTORNEY GENERAL OF CANADA

Respondent



Application for Judicial Review under Sections 18 and 18.1 of the
Federal Courts Act, R.S.C. 1985, c. F-7.

NOTICE OF APPLICATION

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the applicant. The relief claimed by the applicant appears below.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard at 180 Queen Street West, Toronto, Ontario, M5V 3L6.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must file a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the applicant's solicitor or, if the applicant is self-represented, on the applicant, **WITHIN 10 DAYS** after being served with this notice of application.

Emergency Measures, and the *Economic Measures*, in response to protests in Ottawa and border blockades.

5. We submit that the answer to that question is that those legal requirements were not met.

6. The *Emergencies Act* vests the federal cabinet with the extraordinary power to unilaterally proclaim a public order emergency. Such a proclamation serves *de facto* as a temporary constitutional amendment. Under the *Emergencies Act*, after the federal cabinet proclaims a public order emergency, vast legislative authority is delegated to the cabinet. This authority encompasses the power to create new criminal offences and police powers, without recourse to Parliament, advance notice or public debate. The *Emergencies Act* also grants the federal cabinet legislative power in core areas of provincial jurisdiction, such as property and civil rights, without any requirement for provincial consultation or consent.

7. Because of its profound effects on Canada's federal democracy, the grave risk of executive overreach, and the government's past abuse of emergency powers that this legislation was specifically intended to prevent, the courts should regard the *Emergencies Act* as a quasi-constitutional statute and interpret it strictly.

8. The federal cabinet did not have reasonable grounds for concluding there was a public order emergency that justified invoking the *Emergencies Act*, no matter how challenging and difficult it perceived the ongoing protests to be. Invoking the *Emergencies Act* was not absolutely necessary, as the law requires. Federal, provincial and municipal law enforcement already had all of the legal tools and authorities they needed to respond to the protests. Their perceived failure to respond effectively does not in itself authorize the government to invoke the *Emergencies Act*. The stringent conditions set by the *Emergencies Act* for declaring a public order emergency, and thus triggering the vast powers contemplated by the *Emergencies Act*, were not met.

9. In addition, the *Emergency Measures* and the *Economic Measures* violate the *Charter*. First, the prohibitions created by the *Emergency Measures* impose the threat of fine or imprisonment on a broad range of conduct, and, in so doing, risk a chilling effect on otherwise legitimate forms of expression. Second, the *Economic Measures* require banks to disclose otherwise private banking information to the police. Under the law, this amounts to a warrantless and unreasonable search of the private banking information of Canadian citizens. Both the

assistance Windsor sought from the federal government, and what the federal government's response was. That same day, auto industry groups with the support of the City of Windsor sought an injunction from the Ontario Superior Court of Justice to end the blockade.

24. On February 11, 2022, Chief Justice Morawetz granted the injunction, and ordered that the "Police or designated agents shall have authorization to remove any vehicles, personal property, equipment, structures, or other objects that impede or block access to the Ambassador Bridge and approaching roadways."¹⁶

25. By February 13, 2022, without any resort to the *Emergencies Act*, the Ambassador Bridge was fully reopened.

26. According to the Windsor Police, from February 7 to 13, 2022, 90 people were arrested and charged. The charges were laid under existing *Criminal Code* offences and included: 43 people charged with breaching a court order (section 127); 43 people charged with mischief over \$5,000 (section 430); one person charged with obstructing justice (section 139); one person charged with failing to attend court (section 145); and one person charged with dangerous driving (section 320.13). One person is facing a *Highway Traffic Act* charge for failing to remain (section 200(1)(a)).¹⁷

iii) *Blockade in Coutts, Alberta*

27. On January 29, 2022, a blockade began in Coutts, Alberta at the United States-Canada border. The Coutts protest was widely publicized. Alberta RCMP were aware of the planned blockade and had some time to plan their own response, which included having RCMP officers at the border for the duration of the blockade.¹⁸

28. On February 5, 2022, the Alberta Minister of Municipal Affairs, the Honourable Ric McIver, wrote a letter to the federal Minister of Public Safety, Marco Mendicino, and federal Minister of Emergency Preparedness, William Blair. Mr. McIver explained that Alberta's plan going forward was for the RCMP and partner law enforcement agencies to remove demonstrators and bystanders, which would allow for the removal of the vehicles and equipment obstructing the

¹⁶ Exhibit O, Affidavit of Madeleine Ross.

¹⁷ Exhibit FF, Affidavit of Madeleine Ross.

¹⁸ Exhibit P, Affidavit of Madeleine Ross.

highway. The only support that Mr. McIver sought from federal authorities was “provisions” in the form of equipment and personnel: “To support this approach, I am requesting federal assistance that includes the provision of equipment and personnel to move approximately 70 semi-tractor trailers and approximately 75 personal and recreational vehicles from the area.”¹⁹ It is unclear whether and how the federal government responded to Mr. McIver’s request.

29. On February 14, 2022, the Alberta RCMP executed search warrants and arrested several people involved in the Coutts protest. The arrests all appear to have taken place under the authority of the *Criminal Code* or provincial legislation. That day, the Alberta RCMP cleared the blockade and restored the border crossing.

iv) *Blockade at Sarnia Blue Water Bridge, Ontario*

30. On February 8, 2022, two groups of protests blocked the provincial highway leading to and from the Sarnia Blue Water Bridge, a border crossing. However, ten hours later, the OPP was able to clear the blockade and restore access to the border.

31. On February 9, 2022, a group created a highway blockade approximately 30 kilometres east of Sarnia on the provincial highway. Five days later, on February 14, 2022, the blockade was stopped and access to the highway was restored.

v) *Blockade at Emerson, Manitoba*

32. On February 10, 2022, protesters began blocking the Canada-United States border at the port of entry at Emerson, Manitoba. The next day, Manitoba Premier Heather Stefanson wrote to Prime Minister Trudeau seeking immediate and effective federal action regarding the blockade. Premier Stefanson did not specify what the federal action should look like, but she did welcome discussion on potential “federal-provincial collaborative action”.²⁰

33. By February 16, 2022, the blockade was completely cleared. In a press release, the RCMP explained that throughout the previous six days, officers used “open communication, and a measured approach to find a peaceful resolution to [the] situation” and said that because of these efforts, it had been able to coordinate and escort vehicles out of the area. The press release also

¹⁹ Exhibit Q, Affidavit of Madeleine Ross.

²⁰ Exhibit S, Affidavit of Madeleine Ross.

“designated person” (section 3). Entities are required to register with FINTRAC and to report every suspicious financial transaction (section 4), and to disclose to the Commissioner of the RCMP the existence of property in their possession or control that they have “reason to believe” is owned, held or controlled by or on behalf of a designated person and any information about a transaction or proposed transaction in relation to this property (section 5). The *Economic Measures* offer no guidance on how the entities should interpret the phrase “reason to believe”. They immunize the entities from civil liability when complying with the *Economic Measures*.

E. The *Emergency Proclamation*, *Emergencies Measures*, and *Economic Measures* are unlawful

60. The *Emergency Proclamation* and *Emergencies Measures* are unlawful because they do not meet the key requirement of necessity in the *Emergencies Act*. It simply cannot be established that the situation that the invocation of the *Emergencies Act* was intended to address could not have been handled effectively under existing Canadian law.

61. One of the key justifications for invoking the *Emergencies Act* was the impact that border blockades were having on international trade and international relations. But in reality, the border blockades at the Ambassador Bridge, Coutts, Emerson, the Peace Bridge, Sarnia, and Surrey were cleared by police using existing provisions under the *Criminal Code* and provincial laws, including *Highway Traffic Act* legislation. The blockades were all effectively resolved without recourse to the powers granted by the *Emergencies Measures*, and there are currently no border blockades.

62. In clearing the border blockades, every single charge the police have laid thus far has been under the *Criminal Code* and existing provincial legislation, and not a single charge has been laid using the allegedly indispensable new offences created under the *Emergencies Act*.

63. Future border blockades can be effectively addressed in the same way, through the use of existing legislation and the exercise of existing federal and provincial authority. Recourse to the extraordinary powers granted by the *Emergencies Measures* is simply not necessary.

64. Similarly, to address the protests in Ottawa, the federal government already had the power to provide officers to the Ottawa Police Service and to establish a joint command with the OPS and OPP in Ottawa, and it in fact did exercise these powers prior to the *Emergency Proclamation*. In addition, section 129(b) of the *Criminal Code* makes it an offence for a person, without

reasonable excuse, to refuse to assist a police officer in the execution of their duty. This could apply to tow truck drivers who refuse to assist police by making their vehicles available as needed to preserve the peace.

65. Again, the efficacy of existing legislation and authority in addressing the protests in Ottawa is made clear by the fact that every single charge that was laid when the police moved in to end the blockades was laid under existing *Criminal Code* provisions. Not a single charge has been laid pursuant to the *Emergency Measures*.

66. The federal and provincial government also already had the ability to take steps to limit the financing of future illegal protests. The existing authority of FINTRAC over payment processing platforms already requires these platforms to report suspicious transfers to and from crowdfunding sites. In addition, the Attorney General already has the power to make an application for a restraint order under section 490.8 of the *Criminal Code*, which would prevent a person from disposing of, or otherwise dealing with, any interest in offence-related property.

67. When Parliament passed the *Emergencies Act* in 1988, it did so in full recognition of this country's dark history of abuse under the *War Measures Act*. It specifically sought to make sure the *Emergencies Act* would not be used unless it was absolutely necessary, and it stipulated that the powers under the *Emergencies Act* should never be invoked unless existing law was truly incapable of dealing with the problem. There is simply no evidence that this standard was met in this case. In fact, the way in which the protests were actually dealt with and resolved gives us every reason to believe that resort to the *Emergencies Act* was unnecessary.

F. The *Emergency Proclamation*, *Emergencies Measures*, and *Economic Measures* Violate the *Charter*

68. One of the reasons why emergency powers ought to be invoked only in extraordinarily rare circumstances is that emergency powers often lead to abuses of individual rights. Canada's history under the *War Measures Act* provides ample evidence of that. In this case, the reasonableness of the Government's invocation of the *Emergencies Act* must take into account whether the *Emergency Measures* and the *Economic Measures* violate the *Charter*. Both sets of measures create serious violations of core democratic rights and other freedoms, under sections 2, 7, and 8 of the *Charter*.

TAB F

April 1, 2022

Via Email

Federal Court of Canada
180 Queen Street West, Suite 200
Toronto, Ontario M5V 3L6
Attn: Judicial Administrator

Dear Sir/Madam:

Subject: Letter of Intention to Intervene as of Right
T-347-22 – Canadian Constitution Foundation v Attorney General of Canada; and
T-316-22 – Canadian Civil Liberties Association v Attorney General of Canada

We write as counsel for the Attorney General of Alberta ("Alberta") with respect to the above-noted matters, which are being case managed by Mr. Justice Mosley and Madam Prothonotary Milczynski.

We confirm service of a Notice of Constitutional Question by the Applicant in the matter of *Canadian Constitution Foundation v Attorney General of Canada* (Court File No. T-347-22). We hereby provide notice to the parties and the Court that Alberta intends to intervene as of right in this matter pursuant to s. 57(4) of the *Federal Courts Act* in respect of the constitutional questions raised.

Further, we anticipate service of a Notice of Constitutional Question by the Applicant in the matter of *Canadian Civil Liberties Association v Attorney General of Canada* (Court File No. T-316-22). We hereby confirm that Alberta also intends to intervene as of right in that matter pursuant to s. 57(4) of the *Federal Courts Act*, once service is provided. We will confirm service by further letter once the requisite Notice of Constitutional Question is received.

We understand that the next case management meeting is scheduled to be held by videoconference on April 11, 2022 at 11:00am ET. We request the opportunity to participate in this call as an intervener. We would be pleased to provide any further information required in order to formalize Alberta's participation in these proceedings.

Yours sincerely,



Mandy England
Barrister and Solicitor
ME/lw

cc (via email):
Sujit Choudhry and Janani Shanmuganathan, *Counsel for Canadian Constitution Foundation*
Ewa Krajewska and Brandon Chung, *Counsel for Canadian Civil Liberties Association*
R. Jeff Anderson and John Provart, *Counsel for the Attorney General of Canada*
Alexander Boissonneau-Lehner, *Counsel for Canadian Frontline Nurses and Karen Nagle*
Brendan Miller, Blair Ector and Bath-Sheba van den Berg, *Counsel for Jeremiah Jost et al.*

April 13, 2022

Via Email

Federal Court of Canada
180 Queen Street West, Suite 200
Toronto, Ontario M5V 3L6
Attn: Judicial Administrator

Dear Sir/Madam:

Subject: Letter of Intention to Intervene as of Right
T-316-22 – Canadian Civil Liberties Association v Attorney General of Canada

We write as counsel for the Attorney General of Alberta ("Alberta") with respect to the above-noted matter, which is being case managed by Mr. Justice Mosley and Madam Prothonotary Milczynski.

We confirm service of a Notice of Constitutional Question by the Applicant in the matter of *Canadian Civil Liberties Association v Attorney General of Canada* (Court File No. T-316-22). We hereby provide notice to the parties and the Court that Alberta intends to intervene as of right in this matter pursuant to s. 57(4) of the *Federal Courts Act* in respect of the constitutional questions raised.

We would be pleased to provide any further information required in order to formalize Alberta's participation in this proceeding.

Yours sincerely,



Mandy England
Barrister and Solicitor
ME/lw

cc (via email):
Sujit Choudhry and Janani Shanmuganathan, *Counsel for Canadian Constitution Foundation*
Ewa Krajewska and Brandon Chung, *Counsel for Canadian Civil Liberties Association*
R. Jeff Anderson and John Provart, *Counsel for the Attorney General of Canada*
Alexander Boissonneau-Lehner, *Counsel for Canadian Frontline Nurses and Karen Nagle*
Brendan Miller, Blair Ector and Bath-Sheba van den Berg, *Counsel for Jeremiah Jost et al.*